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GABLE & GOTWALS				
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TULSA, OK 74103				
EXAMINER				
DOUYON, LORNA M				
ART UNIT		PAPER NUMBER		
1761				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

iplaw@gablelaw.com

Office Action Summary**Application No.**

10/579,167

Applicant(s)

AINSCOW ET AL.

Examiner

LORNA M. DOUYON

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-5, 7-15 and 18-28 is/are pending in the application.
- 5a) Of the above claim(s) 20-24 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-5, 7-15, 18-19, 25-28 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-CB006)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 17, 2011 has been entered.

2. Claims 1-5, 7-15, 18-28 are pending. Claims 20-24 are withdrawn from consideration as being drawn to a nonelected invention. Claims 6, 16 and 17 are cancelled. Claims 1-5, 7-15, 18-19, 25-27 are currently amended.

Claim Objections

3. Claim 10 is objected to because of the following informalities: in line 2, it is suggested that "further" be added before "comprising". Please note that claim 1 already recite "a bleaching agent" as the "aqueous sensitive component". Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 27 recites the limitation "said non-aqueous carrier component" in line 7. There is insufficient antecedent basis for this limitation in the claim. In addition, the limitation "a non-aqueous gel, wherein at least one aqueous sensitive component is a particulate bleach product" in lines 6-7, is unclear. Lastly, the "period" after "product" in line 7 should be deleted.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 1-3, 5, 8-10, 13, 15, 18-19, 27 and 28 stand rejected under 35 U.S.C. 102(b) as being anticipated by Schulz et al. (US Patent No. 5,008,031), hereinafter "Schulz" for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Schulz teaches an automatic domestic washing machine composition which comprises 12.0 wt% Na-alkylbenzene sulfonate (anionic surfactant, which reads on emulsifier); 12.6 wt% fatty alcohol-ethoxylate (nonionic surfactant which also reads on emulsifier); 30.15 wt% tripolyphosphate (a builder); 5.0 wt% silicate (also a builder); 0.5 wt% methylcellulose/carboxymethylcellulose (reads on the gelling agent); 0.3 wt% optical brightener; 5.0 wt% paraffin oil; 0.8 Alkalase (enzyme); 25.0 wt% perborate tetrahydrate (bleach); 0.15 wt% dyestuff and 0.3 wt% fragrance (see Table 1 under col. 5). Preferably, sodium perborate tetrahydrate in combination with bleach activators

come into consideration as bleaching components (see col. 4, lines 21-24). Sodium percarbonate is another suitable bleach (see col. 4, lines 16-17). The detergent is packed in doses in water soluble film bags (see col. 4, lines 59-63). Schulz teaches the limitations of the instant claims. Hence, Schulz anticipates the claims.

7. Claims 11 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schulz as applied to the above claims for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Schulz teaches the features as described above. In addition, Schulz teaches that the paraffin hydrocarbons have 8 to 40 carbon atoms (see col. 1, lines 61-65). The cellulose ether is present in the composition in an amount up to about 0.5 by weight (see claim 1). Schulz, however, fails to specifically disclose a gelling agent (i.e., cellulose ether) in an amount between 1-10%, and the paraffin having 20-28 carbon atoms.

As the word "about" permits some tolerance (see *In re Ayers*, 69 USPQ 109, and *In re Erickson*, 145 USPQ 207), the upper limit of about 0.5% of Schulz may be considered to read on the lower limit of 1% of instant claim 11.

With respect to the number of carbon atoms in the paraffin oil, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted

based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MFEP 2131.03 and MPEP 2144.05I.

8. Claims 1-5, 7-11, 13-15, 18-19, 25-28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 2002/0142930), hereinafter "Smith" for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Smith teaches a unit dose of detergent product having one or more dishwashing compositions in liquid, gel, paste form, which are substantially anhydrous, and the unit dose includes sachet or pouches having single or multiple compartments (see paragraph [0012] on page 2). In one embodiment, the anhydrous dishwashing composition is in the form of a particulate bleach suspension in a non-aqueous liquid carrier (see paragraph [0016] on page 2). Particulate bleaches suitable for use include inorganic peroxides like percarbonates (see paragraph [0020] on page 2) and chlorine

bleaches (see paragraph [0056-0057] on page 5). In preferred embodiments, the dishwashing composition included in the unit dose form comprises a detergent enzyme (see paragraph [0022] on page 3). Bleach precursors and bleach catalysts (i.e., bleach activators) are also added (see paragraph [0057] on page 6). The composition also contains low cloud point non-ionic surfactants (see paragraph [0058-0059] on page 6, in amounts like for example, 5.6 wt% or 4.6 wt% (see paragraph 0076 on page 7). Other suitable components include organic polymers (which read on gelling agents) in levels from about 0.1% to about 30% by weight of the composition (see paragraph [0067] on page 6). The composition can contain a corrosion inhibitor like paraffin in levels of from about 0.05% to about 10% by weight of the composition (see paragraph [0069] on page 6). Other suitable components include optical brighteners and perfumes 9see paragraph [0070] on page 7). Smith, however, fails to specifically disclose a unit dose single compartment containing a composition which comprises bleach, enzyme, mineral oil, nonionic surfactant and gelling agent in amounts as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a unit dose single compartment containing a composition which comprises bleach, enzyme, mineral oil, nonionic surfactant and gelling agent in their optimum proportions because the teachings of Smith encompass these components and proportions thereof. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re*

Boesch, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F2d 454,456,105 USPQ 233,235 (CCPA 1955).

9. Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Schulz or Smith as applied to the above claims, and further in view of MacQueen et al. (US 6,268,466), hereinafter "MacQueen" for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Schulz or Smith teaches the features as described above. Schulz or Smith, however, fails to disclose a tertiary amide terminated polyamide gelling agent.

MacQueen teaches a tertiary amide terminated polyamide gelling agent useful in formulating personal care products and other articles (see abstract) like household products such as household cleaners (see col. 11, lines 17-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the gelling agent of Schulz or Smith with the tertiary amide terminated polyamide gelling agent of MacQueen because the substitution of one gelling agent for another is likely to be obvious when it does no more than yield predictable results.

Response to Arguments

10. Applicants' arguments filed August 17, 2011 have been fully considered but they are not persuasive.

With respect to the anticipation rejection based upon Schulz, Applicants argue that no reference is made in Schulz to the specific use of an anionic surfactant or a nonionic surfactant, i.e. the 12.0 wt% Na-alkylbenzene sulfonate (anionic surfactant), or the 12.6 wt% fatty alcohol-ethoxylate (nonionic surfactant), as an emulsifying agent to emulsify the mineral oil. Applicants also argue that no reference is made in this reference to the use of cellulose ethers as gelling agent. Applicants also disagree that the cellulose ether anti-greying agents read on Applicants' gelling agent.

The Examiner respectfully disagrees with the above arguments because even though Schulz does not explicitly disclose the use of the alkylbenzene sulfonate or fatty alcohol-ethoxylate as emulsifying agents and the use of cellulose ethers as gelling agents, the fact remains that alkylbenzene sulfonate and fatty alcohol-ethoxylate are surfactants (which read on claim 3) which are also known as emulsifiers and cellulose ethers also act as gelling agents. "Products of identical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (fed. Cir. 1990). See MPEP 2112.01 II. In addition, in response to applicants' argument that Schulz made no reference to the use of cellulose ethers as gelling agents, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicants also request the Examiner to provide evidence showing why a skilled person in the art would utilize the cellulose ethers in the Schulz et al patent for a gel in anhydrous system, as used in Applicants' invention.

The Inventive Example in Table 1 under col. 5 in Schulz is sufficient evidence of the use of methylcellulose/carboxymethylcellulose in an anhydrous system. Also, in col. 4, lines 50-55, Schulz teaches that the detergents have a viscosity in the range of 1,000 to 1,000,000 mPa.s. Further, in col. 4, lines 59-61, Schulz teaches that detergents having a viscosity of more than 10,000 mPa.s have a particular handling advantage if the detergent is packed in doses in water soluble film bags. Thus, it is evident from this teaching that the detergents of Schulz, which are packed in water soluble bags, are in the form of a gel.

Applicants also argue that Applicants' invention teaches the use of a low polarity mineral oil as the single component to act as a carrier, whereas in the Schulz et al patent, the use of mixed solvent is shown to be necessary in the laundry application to obtain the desired characteristics of detergent performance and to confer the viscosity properties and rate of dissolution compared with prior art anhydrous liquid detergents containing polyglycols. Applicants also argue that in the Schulz patent, the paraffin oil requires the inclusion of the higher polarity cosolvents to function as an aid to detergency, and does not at any point identify the need for a gelling agent to gel the organic solvent mix.

The Examiner respectfully disagrees with the above argument because the present claims do not require the mineral oil as a "single" component to act as the

"carrier". Please note that the mid- to high-polarity liquids like esters, ethers, ketones of Schulz (see abstract), are not excluded from the "including" (i.e., "comprising") language of the present claims. Please note that the term "comprising" leaves the claim open for the inclusion of unspecified ingredients even in major amounts, see *Ex parte Davis et al.*, 80 USPQ 448 (PTO Ed. App. 1948). Also, the broad "comprising" and "containing" terminology do not exclude the presence of other ingredients in the composition, unlike the narrow "consisting of" language, see *Swain v. Crittendon*, 332 F.2d 820, 141 USPQ 811 (CCPA 1964). As to the gelling agent, as stated above, Schulz teaches cellulose ethers which read on Applicants' gelling agent.

With respect to the obviousness rejection of claims 11 and 14 based upon Schulz, Applicants rebut the *prima facie* case of obviousness because Applicants' invention shows unexpected results.

The Examiner has carefully considered the specification for the alleged unexpected results, however, the specification only contains a single example on page 11 and has not shown comparisons to any prior art compositions so as to arrive at a conclusion that Applicants' invention provides unexpected results.

With respect to the obviousness rejection based upon Smith, Applicants also argue that Applicants' invention provides unexpected results.

As stated above, the Examiner has carefully considered the specification for the alleged unexpected results, however, the specification only contains a single example on page 11 and has not shown comparisons to any prior art compositions so as to arrive at a conclusion that Applicants' invention provides unexpected results.

Applicants also argue that the anti-redeposition polymers listed in Smith at paragraph 0067 would not behave as gelling agents in the presence of mineral oil, as used by Applicants' invention. Applicants also argue that the paraffin oil in Smith is used as a corrosion inhibitor.

The Examiner respectfully disagrees with the above argument because even though Smith teaches the organic polymers as anti-redeposition and soil release agents and not as gelling agents, please note that the range of proportions (i.e., about 0.1% to about 30% by weight of organic polymers, see paragraph [0067] overlap those recited, hence, said organic polymers would behave similarly as those recited. "Products of identical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (fed. Cir. 1990). See MPEP 2112.01 II. In addition, even though the paraffin oil is used as a corrosion inhibitor, not as a carrier agent, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393.

With respect to the rejection of claim 12 based upon Schulz or Smith in view of MacQueen, Applicants argue that claim 12 depends from claim 1, and, as such it contains all of the limitations of claim 1, and therefore, since neither of the cited references disclose gelling agent that would behave as Applicants', no possible

substitution found in the cited reference could yield predictable results that would lead to the gelling agent as claimed in Applicants' invention.

The above responses to Schulz or Smith apply here as well. Hence, the substitution of one gelling agent for another is likely to be obvious when it does no more than yield predictable results.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to 3 whose telephone number is (571)272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1761